

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>STEPHEN ANDREW OKAMOTO,</b>	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:17-2347</b>
<b>v.</b>	:	<b>(MANNION, J.)</b>
		<b>(MEHALCHICK, M.J.)</b>
<b>NANCY A. BERRYHILL,</b>	:	
<b>Defendant</b>	:	

**MEMORANDUM**

Pending before the court is the report of Judge Karoline Mehalchick, which recommends that the plaintiff's complaint challenging the final decision of the Commissioner denying his application for supplemental security income ("SSI") under Title XVI of the Social Security Act, (Doc. 1), be dismissed for failure to prosecute and to abide by the court's order, and that the case be closed. (Doc. 15). Neither the Commissioner nor the plaintiff have filed any objections to Judge Mehalchick's report. The time within which to file objections has expired.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether

timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31. Upon review, the report and recommendation of Judge Mehalchick will be adopted in its entirety.

By way of relevant background, after the plaintiff filed, through counsel, the instant action on December 19, 2017, the court issued its Standing Practice Order, (Doc. 2), pursuant to Local Rules 83.40.3 and 83.40.4, and the plaintiff failed to file his brief in support of his appeal, despite the fact that Judge Mehalchick granted him an extension of time within which to do so. Thus, Judge Mehalchick recommends that plaintiff's complaint be dismissed for failure to prosecute and to abide the court's order under Fed.R.Civ.P. 41(b).

To date, plaintiff has not filed his brief as required nor has he requested another extension of time to file it even after he was served with Judge Mehalchick's report. Thus, plaintiff's conduct and inaction have indicated a clear intent not to continue with his case, and without his brief, this case cannot move forward. As such, plaintiff's complaint can be dismissed without an analysis of the six factors identified in [Poulis v. State Farm Fire and Casualty Co.](#), 747 F.2d 863, 868 (3d Cir. 1984). See [Stackhouse v. Mazurkiewicz](#), 951 F.2d 29, 30 (3d Cir. 1991).

In *Abulkhair v. New Century Financial Services, Inc.*, 467 Fed.Appx.

151, 153 (3d Cir. 2012), the Third Circuit explained:

Under Fed.R.Civ.P. 41(b), a district court may dismiss an action—either sua sponte or upon a motion—if a plaintiff fails to prosecute his case or comply with a court order. See *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31, 82 S.Ct. 1386 (1962). Prior to such a dismissal, a district court ordinarily must balance the six factors set forth in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir.1984). Where, however, a plaintiff refuses to proceed with his case or otherwise makes adjudication of his case impossible, a balancing of the *Poulis* factors is not necessary. See *Spain v. Gallegos*, 26 F.3d 439, 454–55 (3d Cir. 1994); *Guyer v. Beard*, 907 F.2d 1424, 1429-30 (3d Cir. 1990).

The court has reviewed the reasons presented by Judge Mehalchick for recommending that the plaintiff's complaint be dismissed. Because the court agrees with the sound reasoning that led Judge Mehalchick to the conclusions in her report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ *Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: June 29, 2018**

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